

Issue Paper
Dow Chemical Company, Pittsburg, CA

EPA R9 and NEIC have reviewed the information gathered during the inspection, including the Boiler Industrial Furnace (BIF) operating data. Additionally, we have compared that information with Dow's February 9, 2017 response to EPA's January 6, 2017 Notice of Violation. Based on the review, we have categorized the alleged violations listed in EPA NEIC's December 2016 investigation report into three categories:

- Broader in scope / Excluded Recyclable Material (ERM), wastewater treatment unit exemption related violations (violations 1-4),
- Operating violations when wastes were transferred to the BIF for treatment (violations 5-8),
- Operating violations with or without wastes being transferred to the BIF for treatment (violations 9-13).

Wastewater Treatment Unit Exemption / Excluded Recyclable Materials

According to RCRA Section 40 CFR § 261.1(g)(6), the requirements of this part do not apply to the owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §260.10 of this chapter, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than D001 High TOC Subcategory defined in §268.40 of this chapter, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in §264.17(b). California did not adopt this exclusion, see 57 Federal Register 32726, dated July 23, 1992. Therefore, this exclusion is considered by EPA to be broader in scope, therefore not federally enforceable.

Wastewaters from Dow's chlorinolysis plant discharges to the facility's WWTU. The wastewater is D002 characteristic hazardous waste. Also, the wastewater may be characteristic for D019 and D039, and listed for F002 (reference waste profile # CH199129B-DOW). Dow claimed in their letter that the company is reclaiming the water from this process and alleges that this stream is not a waste, rather is an excluded recyclable material. In a January 31, 1996 letter from DTSC to Dow, the wastewater can be conditionally excluded, provided that the wastewater entering the WWTU is not federally regulated. While wastewater treatment units do not require a RCRA permit, characteristic and/or listed wastewaters that are generated from operations are not excluded from federal regulations. The wastewaters are RCRA hazardous wastes, therefore, Dow is not meeting condition of HSC 25143.42(d)(1).

Operating violations when wastes were transferred to the BIF for treatment

At the time of the inspection, Dow's BIF operating data was being maintained by the facility on microfiche. Dow converted the microfiche data to PDF files. NEIC in turn imported this data into an Excel file. From this data, NEIC had determined that waste was being fed to the BIF units when the BIF units were operating outside of the BIF permit conditions (i.e. insufficient combustion levels).

Dow, in its response to the NOV provided additional operating data for EPA to review. Dow stated that this data confirmed that waste was not being fed to the BIF units when the units were operating outside of the permitted parameters. NEIC compared this new data with the previous data and confirmed, with the exception of violation 7, that the waste indeed was not being fed to the units when the BIF unit was operating outside of the permitted parameters. Violation 7: This was a one-time violation. EPA is not pursuing this violation formally.

Operating violations with or without wastes being transferred to the BIF for treatment (violations 9-13).

Table 6 of DTSC's BIF Permit lists the BIF operating conditions. NEIC interpreted the table to mean that the BIF always had to operate within the parameters of Table 6. NEIC contacted the DTSC permit writer and was informed that the conditions listed in Table 6 of the permit only apply when RCRA wastes were being treated. For this reason, the alleged violations 9-13 will not be pursued.